

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

JEFFREY DESKOVIC,

Plaintiff,

vs.

Index No. CV-07-8150 (KMK)(GAY)

CITY OF PEEKSKILL, et al.,

Defendants.

LINDA MCGARR,

Plaintiff,

vs.

CITY OF PEEKSKILL, et al.,

Defendants.

Index No. CV-07-9488 (KMK)(GAY)

CITY OF PEEKSKILL,

Third-Party Plaintiff,

Vs.

WESTPORT INSURANCE CORPORATION
as successor-in-interest to NORTH RIVER
INSURANCE COMPANY, WESTPORT
INSURANCE CORPORATION as a
successor-in-interest to INTERNATIONAL
INSURANCE COMPANY, et. al,

Third-Party Defendants.

NOTICE OF MOTION

**WESTPORT INSURANCE
CORPORATION'S FED. R. CIV.
PRO. 12(C)
JUDGMENT ON THE PLEADINGS
MOTION ON "TRIGGER" OF
COVERAGE
ON THE SECOND AMENDED
THIRD PARTY COMPLAINTS**

PLEASE TAKE NOTICE, that pursuant to Fed. R. Civ. Pro. 12(c), Third Party Defendant, Westport Insurance Corporation, (“Westport”) brings this Motion for Judgment on the Pleadings on the Second Amended Third-Party Complaints, (Deskovic D.E. 567 and McGarr D.E. 333) filed by the Third Party Plaintiff, City of Peekskill (“City”). Fed. R. Civ. P. 12(c) provides that “[a]fter the pleadings are closed-- but early enough not to delay trial -- a party may move for judgment on the pleadings.” Specifically, Westport moves for a Judgment on the Pleadings, requesting dismissal of the Third Party actions in their entirety as against Westport on the Westport 1989 and 1991 insurance policies issued to the City. Third-Party Plaintiff City brought its Third Party Complaints seeking defense and indemnity for the Deskovic Action and McGarr Action brought against the City and certain members of its police department concerning an arrest, malicious prosecution, and conviction that took place in 1990.

Westport moves for Judgment on the Pleadings upon the annexed Memorandum of Law, the annexed Declaration of Darcy L. Ibach, Esq., sworn to the 10th day of June, 2013, and the exhibits annexed thereto, which include:

- Ex. 1. Deskovic Action D.E. 567, City of Peekskill Second Amended Third Party Complaint against Westport, et al. which includes at Ex. B, the Deskovic Third Amended Complaint, at WD00061-00193.
- Ex. 2. McGarr Action D. E. 333, City of Peekskill Second Amended Third Party Complaint against Westport, et al, which includes at Ex. B, the McGarr Second Amended Complaint, at WM00061-00127.
- Ex. 3. Deskovic Action D.E. 573, Westport’s Answer to Second Amended Third Party Complaint inclusive of:
 - Ex. A. Westport 1989 policy FTZ 51121 at WDA0050-106;
 - Ex. B. Westport 1990 policy FTZ 51144 at WDA00108-164;
 - Ex. C. Westport 1991 primary policy FTZ 503086942-8 at WDA00166-00245, and
 - Ex. D. Westport 1991 excess policy 531-001915-2 at WDA00247-257.
- Ex.4. McGarr Action D.E.338 Westport Answer to Second Amended Third Party Complaint inclusive of:
 - Ex. A. Westport 1989 policy FTZ 51121 at WMA00051-107;

Ex. B. Westport 1990 policy FTZ 51144 WMA00109-165;
Ex. C. Westport 1991 primary policy FTZ 503086942-8 at WMA00167-246, and
Ex. D. Westport 1991 excess policy 531-001915-2 at WMA00248-258.

Accordingly, for the reasons discussed more fully in the attached Memorandum in Support of Westport's Motion for Judgment of the Pleadings on the Second Amended Third-Party Complaints and incorporated herein, the undersigned attorney for Third Party Defendant, Westport Insurance Corporation, will move this Court on a date specifically set by the Court and counsel will then be heard in Courtroom 521 of the Hon. Charles L. Brieant Jr., Federal Building and United States Courthouse, 300 Quarropas Street, White Plains, New York, before the Honorable Kenneth M. Karas, for an Order:

1. Pursuant to Federal Rule of Civil Procedure 12 (c) entering judgment on the Deskovic Second Amended Third Party Complaint in favor of Westport Insurance Corporation declaring that the Westport 1989 policy FTZ 51121, and the Westport 1991 policies FTZ 503086942-8 and 531-001915-2 are not triggered for the claims set forth in the Deskovic Second Amended Third Party Complaint filed by the City of Peekskill, at Ex. B., the Deskovic Third Amended Complaint;
2. Pursuant to Federal Rule of Civil Procedure 12 (c) entering judgment on the McGarr Second Amended Third Party Complaint in favor of Westport Insurance Corporation that the Westport 1989 policy FTZ 51121, and the Westport 1991 policies FTZ 503086942-8 and 531-001915-2 are not triggered for the claims set forth in the McGarr Third Party Complaint filed by the City of Peekskill, at Ex. B., the McGarr Second Amended Complaint;
3. For such other and further relief that this Court may deem just and proper.

Dated: Chicago, Illinois
June 10, 2013

Respectfully submitted,
/s/ Darcy L. Ibach
Westport Insurance Corporation,
as successor in interest to North
River Insurance Company and Westport
Insurance Corporation as successor in
interest to International Insurance Company

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CERTIFICATE OF SERVICE

I certify that I have electronically filed Westport Insurance Corporation's Notice of Motion in Support of Westport's Motion for Judgment on the Pleadings on June 10, 2013 with the Court Clerk using the CM/ECF system, which will automatically send e-mail notification of the filing to the parties of record.

/s/ Darcy L. Ibach

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